IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.442 OF 1989

1. Bhanudas Dnyanu Patil)
2. Prakash Dinkar Patil)
3. Laxman Sakharam Jadhav)
4. Sahaji Dnaynu Patil)
5. Uttam Dnyanu Patil)
6. Bajirao Dnyanu Patil)
All agriculturists,)
normally resident of)
Dushere, Tal.Karad,)
Dist. Satara.) ...Appellants

Vs.

1. The State of Maharashtra)
2. Shantabai Bhaskar Jadhav)
3. Bhanudas Rama Jadhav)
4. Malan Bhanudas Jadhav)
5. Ananda Bala Jadhav)
6. Tanaji Anna Jadhav)
Respondent Nos.2 to 6)
resident of village)
Dushere, Tal.Karad,)
Dist. Satara.) ...Respondents

Shri Prakash Naik for the Appellant Nos.1 and 3 to 6.

Shri B.R. Patil with Shri Ganesh Gole for the Appellant No.2.

Ms S.V.Gajare, A.P.P for the State.

CORAM : ABHAY S. OKA, J.

DATE : OCTOBER 04/05/06/07/09 & 10, 2006.

JUDGMENT:

1. Submissions of the learned Advocates for the parties were heard on the last date. The challenge in

this Appeal is to the Judgment and Order dated 26th June, 1989 passed by the learned 03rd Additional Sessions Judge, Satara in Sessions Case No.104 of 1987. By the impugned Judgment and Order, the accused No.1 is convicted of the offences punishable under sections 147, 149 read with section 307, section 149 read with section 326 and section 149 read with section 324 of the Indian Penal Code. The accused No.2 is also convicted for the same offences. The accused Nos.3,4 and 6 have been convicted for the offences under sections 147, 148, 324, 149 read with section 307, section 149 read with section 326 of the Indian Penal Code. The accused No.5 was convicted of the offence under sections 147, 148 and 149 read with section 324, section 307, section 326 and 149 read with section 324 of the Indian Penal Code. However, he was acquitted of the offence under section 25(1)(a) of the Arms Act, 1954. The accused No.1 has been convicted to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-. In default, he is directed to suffer rigorous imprisonment for three months for each offence. The accused No.2 is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-. In default he has been directed to suffer rigorous imprisonment for three

months for each offence. The accused Nos.3, 4 and 6 have been sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-. In default, the said accused persons have been directed to suffer rigorous imprisonment for three months for each of the offences. The accused No.5 is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- for the offences under section 147, 148 and 149 read with section 324 of the Indian Penal Code. In default he has been sentenced to suffer rigorous imprisonment for three months for each of the offences. He has been further sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- for the offence under section 307. In default he is directed to suffer rigorous imprisonment for one year. He is also sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/- for the offences under section 326 of the Indian Penal Code. In default, he is directed to suffer rigorous imprisonment for one year for the offence under section 326 of the Indian Penal Code. The learned Trial Judge directed that on realisation of the fine, certain amount shall be paid to P.W.No. 8 Shantibai Bhaskar Jadhav, P.W.No. 6 Bhanudas Rama Jadhav, P.W.No. 10 Tanaji Anna Jadhav and P.W.No. 11

Ananda Bala Jadhav.

2. It will be necessary to refer to the prosecution case in brief. According to the prosecution case, the incident occurred on 26th February, 1987 at village Dushere. Apart from the present case there was a counter case. The village Dushere is located to the north of city of Karad. There is another village called Karve standing to the north of village Dushere. The public road leading from Karad passes by village Karve which runs towards Dushere. There is a house of the complainant Bhanudas Ramji Jadhav (P.W.No.6) in village Dushere. The allegation of the prosecution is that on 26th February, 1987, in the night at about 10.00 p.m, on a public road in front of the house of the complainant the accused persons i.e the Appellants were members of unlawful assembly and in prosecution of common object of such assembly of committing the murder of the complainant, his wife Malan (P.W.No.9) and Shantabai (P.W.No.8),(the wife of complainant's brother) and to cause injuries to the prosecution witnesses, committed offence of rioting. The allegation is that they committed offence of rioting with deadly weapons and the accused No.5 was holding a revolver and others

were carrying heavy sticks. The allegation against the accused No.5 is that he attempted to commit murder of the complainant, Malan (P.W.No.9) and Shantabai (P.W.No.8) by the said revolver. The allegation is that he fired bullets from the revolver aiming at the complainant Bhanudas, Malan and Shanatabai and caused injuries to the said persons. The allegation is that the accused persons caused hurt to the prosecution witnesses Hanumant Dattatray Jadhav (P.W.No.2), Tanaji Anna Jadhav (P.W.No.10) and Ananda Bala Jadhav (P.W.No.11). The allegation against the accused No.5 was that he was in possession of a fire arm namely, a 38 bore KF revolver though he was not holding a valid licence to possess the revolver.

3. Before referring to the evidence on record and before referring to the submissions made by the learned Advocates appearing for the parties, it will be necessary to refer to the affidavits filed by certain Respondents. It is stated that the Respondent Nos.2 and 3 have since died. The Respondent Nos.4, 5 and 6 have tendered affidavits through their Advocates. In the said affidavits it is stated that after the Appellants were convicted, the said Respondents are having cordial relationship with the

Appellant. It is stated that they have put an end to the dispute between them and the accused persons. It is stated that the accused Appellants may not be sent to jail for undergoing imprisonment.

4. Shri Naik, the learned counsel appearing for some of the Appellants invited my attention to the evidence on record. His first submission is that the entire prosecution case is unbelievable and the same deserves to be discarded. He submitted that there is no evidence available on record against the Appellants. He submitted that so far as accused No.5 is concerned, there is nothing on record to show that he was possessing a revolver and that he fired bullets from the said revolver. He submitted that alleged seizure of the said revolver is itself doubtful in as much as there is no discovery under section 27 of the Indian Evidence Act and it is alleged that in a cattle-shed near the house of the accused No.5, the said revolver was found. He submitted that as the discovery of revolver was itself doubtful, the prosecution case becomes vulnerable. He pointed out several discrepancies and inconsistencies in the prosecution case.

5. Without prejudice to his submissions on merits, he placed reliance on the decisions of the Apex Court in the case of **Bankat V. State of Maharashtra [(2005)1 Supreme Court Cases Page 343)** and **Surendranath Mohanti vs. State of Orissa (AIR 1999 Supreme Court Page 2181)**. He submitted that though the offences are not compoundable, in view of what is held by the Apex Court, the substantive sentence can be reduced to the one which is already undergone. He placed reliance on the affidavits filed by the Respondents. Shri B.R. Patil appearing for the other Appellant has adopted the submissions of Shri Naik. The learned A.P.P. supported the impugned judgment and order by pointing out the evidence on record and the findings recorded by the learned Trial Judge.

6. With a view to appreciate submissions made by the Advocates appearing for the parties, it will be necessary to refer to the evidence of the prosecution witnesses. The first witness (P.W.1) is Shri Anna Bandu Jadhav. He is a panch witness who has signed the panchnama of the scene of offence. He has stated that one bullet was found lying near house of Bhanudas and certain bangle pieces were found inside his house. In the cross-examination he stated that he did not

notice any bullets or pieces of bangles at the scene of offence. He proved the panchnama in evidence. P.W.2 Shri Hindurao Ganpati Jadhav is again a panch witness. Discovery of sticks was made at the instance of the Appellant No.3 in presence of the said witness. He proved the panchnama in evidence.

7. P.W.3 Mohan Dada Jadhav turned hostile and the learned Public Prosecutor was permitted to ask him questions in the nature of cross-examination. P.W. No.5 Prakash Jadhav was allegedly a panch witness in whose presence the revolver used by the Appellant No.5-accused No.5 was seized. P.W.6 Bhanudas deposed that he was residing in his house with his wife Malan, sons Shashikant and Manohar, brother Anna Rama Jadhav and brother's family in one house. According to him his nephew Shivaji Anna Jadhav resides at village Shinoli as his wife was working there as a primary school teacher. He stated that elections of the village panchayat were held in December 1986. He stated that panel of Shankar and the panel of the accused No.1 Bhanudas D. Patil had contested the said election. The panel of accused No.1 included P.W.3 Mohan Dada Jadhav, Bhagwan Shantaram Jadhav, Shivaji Sakharam Jadhav and Yashoda Vishnu Jadhav. According

to the said witness at about 08.00 p.m. on 26th February, 1987 he was sitting in the temple of Maruti. At that time he heard commotion from the direction of his house and shouts "catch catch". He noticed that accused No.5 was running with a stick in his hand towards the land Khadakmala. He was being chased by the nephew of the said witness, namely, Subhash and Jagannath. However, they could not catch him. Therefore, P.W.6 took them back to his house. He stated that after pacifying them he returned to the temple for sleeping. At about 10.00 p.m. he again heard commotion from the direction of his house, therefore, he rushed to his house and through northern door he came out on the road on the southern side. He found that the accused No.2 was catching shirt of his son Shashikant and the accused No.1 was giving filthy abuses to his nephew Jagannath. He stated that at that time electricity light was available from the nearby electricity pole besides the light of the tube light in kitchen room in his house. He stated that when he was attempting to rescue Shashikant, he found that the accused Nos.3 to 5 were rushing towards them. The accused No.5 was ahead of all of them. The accused No.5 was possessing a revolver and the other two accused were possessing sticks in their hands.

When they reached at about a distance of five feet from his house, the accused No.5 started firing bullets from revolver in his hand. The first bullet hit Shantabai the widow of the deceased brother of the witness. The said bullet hit Shantabai on her left axilla. The second bullet hit at the ankle of his wife Malan. The third bullet hit his right ankle. He stated that his nephew Tanaji sustained sticks blow from either of the accused Nos.3, 4 and 6 on his head and ear. He stated that at that time, Ananda Bala Jadhav tried to rescue him. However, the said Ananda also sustained injuries due to stick blow inflicted by either of the said three accused persons. He stated that because of the sound of firing, a mob of about 70 to 75 people gathered there. He stated that mob got enraged and chased all the accused persons towards Maruti temple. He stated that the injured persons were taken to the hospital. The said witness has been extensively cross-examined. In the cross-examination he admitted that he had not seen Vishnu. He stated that the accused No.2 caught his son Shashikant’s neck by shirt just in front of the southern door of his house. He stated that when he was in his house, the accused No.1 was giving abuses to Jagannath. He stated that female members of the family had also come

out and were standing at a distance of about two and half feet from the door frame. He denied the suggestion that besides accused Nos.3 to 6, number of persons had come alongwith them at the place of incident. In the further cross-examination he stated that Ananda received a stick blow after Tanaji sustained a stick blow. He stated that at the time of incident, besides the accused persons, no other person was there having weapon in his hand and no third person has caused injuries to the accused persons in his presence.

8. It will be also necessary to refer to the evidence of P.W.7 Hanumant Dattatraya Jadhav. He stated that he participated in election campaign of the village panchayat election. He stated that after the election he was subjected to threats by the accused Nos.1,2 and 5. He stated that on 26th February, 1987 at about 08.00 p.m. he was sitting in his grocery shop. At that time his customers Anita and Sarjerao Kisan Jadhav were there. The accused No.5, according to the said witness, came in front of his shop and started giving filthy abuses to him. The accused No.5 climbed on the roof of house of Sakharam Patil and picked up a stick. After noticing his

intentions, the witness ran towards the house of Bhanudas (P.W.6). He stated that while he was entering the house through its southern door the accused No.5 gave him blow on his back. According to him the second blow was inflicted on the hand of Mangal Jadhav. When he raised hue and cry, Subhash and Jagannath came and they chased the accused No.5.

9. At about 10.00 p.m., the accused No.2 and the accused No.1 came near the southern door of the house of P.W.6 Bhanudas and started giving abuses. Shashikant and Jagannath came out of house from the southern door of the house. According to the said witness at the relevant time, he alongwith Shobha Jadhav were standing under the southern door frame. He stated that sticks were only in the hands of accused Nos.3,4 and 6 and they were led by accused No.5 who was carrying a revolver in his hand. He further stated in his evidence as under:

> " Sound of 2/3 fired bullets was vented to the air. One bullet hit the right ankle of PW No.6 Bhanudas. Thereby lot of commotion effected. I saw Tanaji Anna Jadhav rushing out of the house of PW No.6 on the road and he

> sustained stick blow at the hand of one of the accused persons at his head. I also saw Ananda Bala Jadhav rescuing the scuffle he also sustained stick blow to his head at the hands of one of the accused persons. Because of the said commotion nearby people rushed to the spot. The said gathered people noticing injuries sustained by the females chased the accused persons, towards north direction. Vishnu Ganu Shinde took Ananda Bala Jadhav to Karad on his motorcycle".

The said witness has been extensively cross-examined by the Advocate for the accused. In the cross-examination he stated that the people in the area witnessed him chasing Subhash and Jagannath. He stated that he himself, Subhash and Jagannath rested in the northern room. He stated that at about 09.30 p.m he took the food in the house of P.W.6 Shri Bhanudas.

10. The second material witness is Shantabai Bhaskar Jadhav (P.W.8). Her evidence will have to be referred to in detail as she is the injured person. She stated that she is residing together with the

family of the P.W.6. She stated that at about 08.00 p.m. on the fateful day, the women in the house were engaged in cooking food. At that time P.W.7 Hanmant rushed into kitchen room as he was being chased by the accused No.5. He sustained stick blow at the back at the hands of the accused No.5. She stated that the accused No.5 entered the kitchen room and caused Mangal to sustain stick blow in the kitchen room. In the commotion caused by the abuses hurled by the said witness and other persons present in the house, the accused No.5 went out by southern door and ran away. Subhash and Jagannath tried to chase him but could not succeed in getting the accused No.5. P.W.6 Bhanudas brought back Subhash and Jagannath.

11. According to P.W.8, at about 10 p.m, the accused Nos.1 and 2 came in front of southern door of her house when she was engaged in cleaning utensils. According to her they started giving abuses to P.W.7 Hanmant, Subhash and Jagannath. The accused No.2 caught the shirt on the person of Shashikant as the said Shashikant rushed alongwith Subhash and Jagannath to catch the accused No.1. There was exchange of abuses between accused no.1 and Jagannath at that time. P.W.6 Bhanudas after hearing the hue and cry

raised by the said witness and others, rushed to the spot from Maruti temple after passing through northern door and southern door of his house. The accused Nos.3 to 6 rushed from the eastern direction to the spot. The accused No.5 was ahead of accused Nos.3, 4 and 6 and was having a revolver in his hand. There were sticks in the hands of accused Nos.3,4 and 6. At that time P.W.8 Mangal and P.W.No. 9 Malan were standing just outside the door frame. At that time accused No.5 fired bullets from the revolver in his hand and P.W.8 received a bullet in her left armpit. According to P.W.8, she collapsed due to her bleeding injury. Malan sustained bleeding injury to the right leg and P.W.6 to his right leg near ankle. She deposed that the blouse on her person was torn due to the bullet. P.W.8 was extensively cross-examined. She admitted that she alongwith Malan and Mangal intervened and separated Jagannath and Subhash from accused No.2. She stated that P.W.7 Hanumant did not intervene. She admitted that P.W.6 Bhanudas rushed from the Maruti temple and he participated in separating Jagannath and Shashikant from accused Nos.1 and 2. She denied the suggestion that number of people had gathered or had rushed to the spot and were having sticks in their hands. She denied the

suggestion that the accused No.5 was not possessing a revolver.

12. P.W.9 Malan, wife of Bhanudas Jadhav (P.W.6) deposed that at about 08.00 p.m. she was working in the kitchen room when P.W.7 Hanmant Dattatray Jadhav abruptly entered the kitchen. At that time the accused No.5 was chasing Hanmant and the accused No.5 inflicted stick blow on the person of Hanmant. Her daughter-in-law Mangal also received stick blow at the hands of accused No.5 in the kitchen. She stated that by leaving his footwear in the kitchen, the accused No.5 disappeared towards Maruti temple. Though Subhash and Jagannath attempted to chase him they could not succeed. She deposed that at about 10.00 p.m in the night, when she alongwith Mangal, Subhash and P.W.8 Shantabai were taking meal, the accused Nos.1 and 2 came in front of the southern door of the house and asked the persons present inside to send Hanmant outside the house as they wanted to teach him a lesson. At that time P.W.9's son Shashikant and Jagannath went to accused No.2 when the accused No.2 caught shirt on the person of Shashikant. P.W.9 stated that she alongwith P.W.8 and Mangal started separating Shashikant from accused No.2. When they

raised hue and cry, P.W.6 Bhanudas came to the spot. At that time accused No.5 with his revolver came to the place of incident from eastern side alongwith accused Nos.3,4 and 6 who were having sticks in their hand. The accused No.5 fired bullet firstly towards Shanatabai (P.W.8) causing her injury on left armpit. According to her the second bullet hit her right ankle and the third bullet hit right ankle of her husband that is P.W.6 Bhanudas. She stated that after the firing, all the accused ran towards the eastern side. In the cross-examination she stated that mob gathered at the place of the incident only after the incident of firing. In the cross-examination she stated that she was unable to tell where P.W.6 Bhanudas was standing when she received bullet injury. She stated that he was standing on her right hand side. She admitted that she did not tell the police about receiving bullet injury by P.W.6 Smt. Bhanudas. She denied other suggestions given in the cross-examination.

13. P.W.10 Tanaji Anna Jadhav stated that he was working in his land throughout the day on the day of incident and returned home at 08.00 p.m. On the way to his home, he noticed that Jagannath, Shashikant and

his uncle P.W.6 Bhanudas were standing near Maruti temple. He stated that he learnt the incident pertaining to Hanmant from them and then all of them returned home from the temple. He stated that at about 10.00 p.m., the accused Nos.1 and 2 came in front of his house and started asking about whereabouts of P.W.7 Hanmant. He stated that Shashikant and Jagannath went towards accused Nos.1 and 2 and Shantabai, Malan and Mangal followed them. He stated that the accused No.5 had a revolver in his hand and the accused Nos.3, 4 and 6 who came there subsequently had sticks in their hand. He stated that accused No.5 fired four to five bullets as a result of which Shantabai, Malan and Bhanudas suffered injuries. He stated that accused No.4 Shahaji gave him a stick blow on his head. He stated that he was unable to tell as to who gave him second blow with the stick. In the cross-examination, he stated that there was scuffle between Shashikant and accused No.2. He stated that three ladies and Subhash were separating Shashikant from accused No.2 when he came out of house. He stated that P.W.6 Bhanudas arrived thereafter. He stated that the firing occurred when the three ladies, Subhash and Bhanudas were separating Shashikant from accused No.2. He stated that the

accused No.5 started firing as he reached the spot at about 10 feet to the east of accused No.1. He denied that about 10 to 15 persons including the accused Nos.3 to 6 came to the spot having sticks in their hand. He denied the suggestion that a mob of about 200 people had gathered in front of their house at 08.00 p.m.

14. P.W.7 Hanmant stated that village panchayat elections were held in 1986. He stated that there were two groups, one headed by Shankar and the other headed by the accused No.1. he stated that he was a supporter of the panel headed by Shankar which won the election. He stated that he participated in propaganda. According to him after the victory of panel headed by Shankar, he was subjected to threats by the accused Nos.1, 3 and 5. The threats were to teach him lesson because of his participation in election propaganda.

15. He alleged that on 26th November, 1987 at about 08.00 p.m, the accused No.5 came in front of his shop and started giving filthy abuses. He stated that the accused No.5 picked up a stick and he was determined to beat him with stick. He stated that he

rushed to the house of P.W.6 Bhanudas. While he was entering the said house, the accused No.5 gave him a stick blow in his back and he gave second blow on the hand of Mangal. After he raised hue and cry, family members came at the spot. He stated that he himself, Jagannath and Subhash had come to the house. He stated that the accused No.5 started firing bullets with his revolver in the direction on southern door of the house of P.W.6 Bhanudas. He stated that one bullet hit left armpit of Shanatabai and two other bullets were received by Malan and P.W.6 Bhanudas. He stated that because of the commotion, nearby people rushed to the spot. The said persons who had gathered thereafter noticing the injuries sustained by female members of the family, chased the accused persons. He admitted that people in the area were witnessing the chase by the said Subhash and Jagannath of the accused No.5 up to Maruti temple. He admitted that P.W.6 Bhanudas remained for one hour with him in his house and thereafter went to Maruti temple for sleeping. However, nothing was proposed for lodging complaint with the police or reporting the incident to the police patil.

16. P.W.12 is one Tanaji Narhari Patil who was a

P.S.I. attached to Taluka Karad Police Station. He narrated the prosecution case and manner in which evidence was recorded. P.W.13 is one Shri Jayantrao Ramchandra Vatre who was a P.S.I. of Traffic branch at Karad at the relevant time. He is the officer who did the panchnama of the spot of incident. He stated that search of the house of the accused No.5 was taken in presence of panch witnesses on 01st March, 1987 and nothing incriminating was found in the residential house. He stated that search of a cattle-shed standing near the residential house of the Accused No.5 was effected. He stated that he traced the revolver under the heap of agricultural implements. He proved the seizure panchnama and his signature thereon. He stated that at the time of seizure, the revolver was extremely rusted. The revolver alongwith five empty chambers of bullets of brass were sent to Ballistic Expert, Bombay.

17. P.W.14 is Vijaykumar Gunpal Chaugule who was attached to Karad police station from March 1998-99. He stated that when muddemal in respect of Crime No.87 of 1987 was sent to the concerned Sessions Court, he found that the number inscribed on the revolver was inconsistent with the number spelt out in the report

of Ballistic Expert. Therefore, he drew correction panchnama for recording the correct number of the revolver.

18. This is the oral evidence on record against the accused persons. The evidence of medical officer is discussed in later part of this judgment. The oral evidence will have to be scrutinized. P.W.1 Anna Bandu Jadhav does not throw any light on the actual incident. Nothing much turns on the said evidence so far as merits of the main controversy is concerned. According to P.W.6, the accused Nos.4,5 and 6 rushed to the spot and the accused No.5 was ahead of them. He stated that the accused No.5 started firing the bullets from revolver and the bullets caused injuries to Shantabai, Malan and himself. He received bullet injury to right ankle. It is pertinent to note that he has not stated that the accused No.5 was aiming at a particular person. He stated that a mob gathered at the spot of the incident and there were 70 to 75 people. Thereafter he came back to his house. In the cross-examination he admitted that he was serving as a teacher. It must be noted here that so far as this witness is concerned, he has not deposed before the court as regards assault on the other witnesses. As

stated earlier he has not stated that the revolver was aimed at a particular witness. The said Bhanudas (P.W.6) has not ascribed any specific role to the accused Nos.1 to 4 and 6. He has stated that accused No.5 was carrying a revolver and accused Nos.3 to 6 were carrying sticks. He has stated that his nephew Tanaji received stick blow from either of accused Nos.3,4 and 6 on his head.

19. So far as P.W.7 Hanmant is concerned, he has clearly stated that accused No.5 gave one stick blow on his back and second stick blow was given by him to Mangal. He stated that the accused No.5 started firing bullets in the direction of door frame of the door from a distance of 10 feet. So far as deposition of Shantabai is concerned, she has simply stated that the accused No.5 fired bullets from his revolver and she suffered injury. She has not stated that the accused No.5 fired bullets aiming at a particular person. However, the P.W.9 Malan stated before the court that the accused No.5 fired bullet firstly towards Shantabai causing her injury on the left armpit.

20. Another important aspect of the matter is

regarding alleged recovery of the revolver which was used by the accused No.5. It is obvious that there is no recovery which will attract section 27 of the Indian Evidence Act, 1872. The case of the prosecution is that the house of the accused No.5 was searched. In that behalf it will be necessary to refer to the panchnama at Exhibit 74. The said panchnama merely records that the panchas were shown revolver by the police which allegedly belongs to the accused No.5. It will be necessary to see the prosecution case as regards the manner in which the revolver was recovered. The revolver is not recovered from the house of the accused No.5. The revolver is stated to be recovered from the ceiling of a cattle-shed near the house of the accused No.5. Before going back to the deposition of the relevant witnesses, it will be necessary to refer to panchnama at Exhibit 62. The panchnama at Exhibit 62 records that the panch witnesses alongwith P.S.I of Karad Taluka Police Station and police patil went on foot to Khadakmal vasti. The police patil showed the alleged house of the accused No.5 which was on the northern side of the Karad-Karve Road. After telling the persons present in the house the object of the search, the police party took search of the house in which the

revolver was not found. It is recorded that after the search was over, the police patil told that there was a thrash-roof (cattle-shed) on the southern side of the house which is owned by the accused. The panchnama records that the revolver was found to be kept under the planks and agricultural implements in the cattle shed.

21. The submission made before me was that the recovery becomes doubtful as there is no evidence on record to show that the cattle-shed was owned by the accused No.5. This attractive submission cannot be considered for a simple reason. In the cross-examination of P.W.13 Jayantrao Ramchandra Vatre, it is recorded as under:

> "It is true that the cattle shed of accused No.5 stands at a distance of 125 ft. from his residential house to south having public road in between. Not true that no revolver was traced and seized from the cattle shed of accused No.5".

The suggestion given on behalf of the accused itself shows that there was no dispute that the cattle-shed

is owned by the accused No.5. Apart from the evidence of panch, the evidence of all eye-witnesses is very consistent about the fact that accused No.5 was possessing a revolver and he fired shots by using the revolver. What offence has been committed by the accused No.5 is altogether a different question. However, it is not possible to accept the submission that the possession of the revolver at the time of incident by accused no.5 is not established.

22. Accused No.1 has been convicted for offences under section 147, 149 read with section 307, 149 read with section 326 and section 149 read with section 324 of the Indian Penal Code. The conviction of the accused No.2 is in for the same offences. The conviction of accused Nos.3,4 and 6 is for the same offences in addition to the offences under section 148 and 324 of the Indian Penal Code. As stated earlier, conviction of accused No.5 is for the offence under section 307 and 326 apart from sections 147, 148, 149 read with section 324 of the Indian Penal Code. Firstly, I am dealing with the case of accused Nos.1 and 2. P.W.6 Bhanudas has stated that at about 10.00 p.m. he saw accused No.2 catching the shirt on the person of his son Shashikant and the accused No.1 gave

him filthy abuses. According to his version at 08.00 p.m the accused Nos.1 and 2 never arrived at the scene and only accused No.5 was present. According to his version at 10.00 p.m accused Nos.1 and 2 arrived and thereafter accused Nos.3, 4, 5 and 6 rushed towards P.W.6 and Shashikant. There is no specific allegation in his deposition about any further role played by the accused Nos.1 and 2. In the cross-examination he admitted that he had not seen accused Nos.1 and 2 till 09.30 p.m. P.W.7 Hanmant has again stated that accused Nos.1 and 2 came at about 10.00 p.m. and started giving abuses. The specific words of abuses are not stated. According to him the accused No.2 caught hold of the T-shirt on the person of Shashikant and there was a scuffle between him and Shashikant. Apart from these allegations, nothing further is stated against the said accused persons. P.W.8 Shantabai has made similar allegations against the accused Nos.1 and 2. However, no specific allegations have been made by her as regards assault as by the accused Nos.1 and 2. P.W,9 Malan has ascribed similar role to accused Nos.1 and 2. P.W.10 Tanaji stated that accused Nos.1 and 2 came infront of the house and started asking about whereabouts of P.W.7. Shashikant and Jagannath thereafter went towards accused Nos.1

and 2. He has not stated anything further as against accused Nos.1 and 2. This is the kind of evidence which is available against accused Nos.1 and 2. So far as accused Nos.3, 4 and 6 are concerned, a role has been ascribed to them in the actual incident of assault. P.W.6 Bhanudas stated that after the accused Nos.1 and 2 arrived at the scene at 10.00 p.m., the accused Nos.3 to 6 rushed towards them. He has stated that Tanaji (P.W.10) sustained a stick blow from either of the accused Nos.3,4 and 6 on his head and ear. He has stated that the accused Nos.3, 4 and 6 were carrying sticks with them. However, he is not sure whether a particular accused out of accused Nos.3,4 and 6 gave the blow by sticks. Thus, P.W.6 Bhanudas has only proved that said three accused persons were carrying sticks in hand and one of them assaulted Tanaji by a stick on his head. The version of P.W.7 Hanmant about the role played by accused Nos.3,4 and 6 is not different. He has stated that the said accused persons were carrying sticks in their hand. This witness again states that Tanaji (P.W.10) sustained stick blow at the hands of one of the accused persons. P.W.8 Shantabai has the same version to tell as regards the role of the accused Nos.3,4 and 6 who were carrying with sticks in their hands.

However, she has stated that after sustaining bullet injury, she collapsed and became unconscious. So she has not stated anything further about the role played by accused Nos.3,4 and 6 except for stating that they were carrying sticks and they rushed to the spot alongwith accused No.5. P.W.9's version is limited to accused Nos.3,4 and 6 rushing to the spot with sticks in their hand. She has not deposed anything about the assault by the accused Nos.3,4 and 6 by using sticks and infact according to her after the bullets were fired by the accused No.5, all the accused persons ran away towards the eastern side. P.W.10 Tanaji has again deposed that accused Nos.3,4 and 6 were having sticks in their hands. He has stated that accused No.4 Shahji gave him a stick blow on his head and the second one on his left ear. He, however, stated that he was not aware as to who caused the second blow of the stick. In the cross-examination he denied that he had not told the police about the stick blow given to him by P.W.4 Shahji. However, he admitted that there was no reference to said allegation in his statement. P.W.11 Ananda reached the spot after hearing the hue and cry when the accused persons had reached the house of the complainant. He stated that P.W.10 Tanaji was being assaulted by the accused No.4, 5 and 6 and he

went to rescue P.W.10 Tanaji from the said beating. He stated that at that time, accused No.4 Shahji inflicted a stick blow on his head causing bleeding injury. He stated that he also caused another injury to his head by second stick blow.

23. This is the nature of evidence against the accused Nos.3,4 and 6. Even P.W.10 Tanaji has not deposed to the effect that the accused Nos.3 and 6 assaulted him or any one else though such a case was tried to be made out by P.W.11 Ananda which cannot be accepted. P.W.10 Tanaji has, however, stated that accused No.4 Shahaji inflicted a stick blow on his head causing bleeding injury and accused gave a second stick blow on the head again causing a bleeding injury. At this stage it will be necessary to refer to the evidence regarding injuries sustained by the various injured persons.

24. P.W.4 Pandurang is the Medical Officer who was attached to Cottage Hospital at Karad. So far as injuries of Shantabai (P.W.8) is concerned, he has described the injuries as under:

"1) Left infra Axiliary region 7th

intercostal space 7 m.m. diameter hole through which fat was protruding slightly bleeding was present.

2) right axilla, hand mark 1 cm in diameter pulpabale tenderness present systemic examination was normal cause by fire-arm, age-within 6 hours, X-ray taken. It showed bullet in right axilla".

He stated that the said injuries have been caused due to one bullet firing. In examination-in-chief he stated that injuries are dangerous to the life. However, in the cross-examination he admitted that "it is true that injury per se in case of Shantabai was not dangerous to her life". So far as P.W.6 Bhanudas is concerned, he suffered following injuries:

"i) wound of entry. It was circular, 6 m.m in diameter with inverted edges 1/2 inches above and posterio to the tip of lateral malleouls of right ankle bleeding present, bare bone was seen.

ii) wound of exist 1 cm. in diameter

> circular 1 inch above and posterior to the tip of medical malieouls, bleeding present, edges averted ankle edema was present".

It is further stated that he suffered fracture on lower end of tibia and fibula. The Medical Officer opined that fractures are possible due to bullet injury. The third person who allegedly suffered bullet injury is Malan. The injury suffered by her is described by the Medical Officer is as under:

> "i. two puncture wounds over anterior aspects of right ankle bone beet, bleeding present 3/4" in diameter diffused swelling around both injuries x-ray taken it, shows found out fracture with loss of fracture segment".

25. P.W.4 Pandurang Pawar has further deposed that Ananda (P.W.11) suffered one incise wound in right frontal region having size of 3" X 1" and one abrasion over left partial region. The injury suffered by Hanmant is stated to be one abrasion admeasuring 2" X 2". So far as Tanaji (P.W.12) is concerned, the injuries are as under:

"i Haemotoma over left parietal region: 1 1/2 inches in diameter tenderness present.

ii. Transverse CLW over left ear posetriarly, cartilage fracture seen. size 1 1/2 inch X 1/2 inch, bleeding present. X-ray of skull was taken, cause hard and blunt substance-age within six hours".

26. The injury caused to Hanmant (P.W.7) is by accused No.5 by a stick blow. So far as the injury caused to Tanaji is concerned it is not a simple injury. According to his version it is the accused No.4 who assaulted over his head by a stick.

27. So far as presence of the accused persons on the site is concerned, it is clearly established by the deposition of all witnesses. Therefore, in case of accused Nos.1 and 2 sections 147 and 149 read with sections 307, 326 and 324 of the Indian Penal Code have been applied. In addition to the aforesaid sections, in case of accused Nos.3,4 and 6, section 148 has been applied. It is established by the witnesses that they were carrying sticks in their

hand. After considering the entire evidence on record, it is difficult to find fault with the finding of guilt recorded by the Trial Court against the said accused except for the offence under section 307 of the Penal Code. Even if entire prosecution case is taken as true, by no stretch of imagination section 307 is attracted considering the injuries caused by the accused Nos.1,2,3, 4 and 6. The accused No.1 has been given rigorous imprisonment for one year. Same is the sentence against the accused Nos.2,3,4 and 6. Only the fine amount is different. There is no dispute between parties that all of them have undergone sentence for twenty days.

28. Reliance has been placed by the counsel appearing for the Appellant on the affidavits of Tanaji, Malan and Ananda who are the Respondents in this Appeal. The contents of the said affidavit are identical. Therefore, a reference is made only to the affidavit of Tanaji Anna Jadhav in which it is stated as under:

> "5. I say that since we are residing in the same village and presently having cordially relationship in

> order to maintain the peace and harmony with each other I do not intended to pursue the said prosecution and wish that the conviction of the accused be set-aside and or they may not be sentence to imprisonment".

The deposition of P.W.4 Pandurang discloses that all the accused persons save and except accused No.5 suffered injuries which are not at all explained. The learned counsel appearing for the Appellants has relied upon decisions of the Apex Court in the case of **Bankat V. State of Maharashtra[(2005) 1 Supreme Court Cases, Page 343 and Surendranath Vs. State of Orissa 1999 Supreme Court Page 2181**. In the case of Bankat and Anr (supra) the conviction of the accused persons was under sections 325 and 326 read with 34 of the Indian Penal Code. The substantive sentence in the said case before the Apex Court for all the accused except one was of one year with fine of Rs.500/-. The Apex Court confirmed the conviction. The Apex Court held that there cannot be any compounding of the offence punishable under section 326 of Indian Penal Code. In paragraph No.16 the Apex Court observed

thus:

> "16. However, considering the fact that the parties have settled their dispute outside the court, the fact that 10 years have elapsed from the date of the incident, and the further fact that the appellants have already undergone several months' imprisonment, ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs.5000 on each of the accused under Section 326 read with section 34 of the Indian Penal Code. In default of payment of fine, the appellants concerned shall undergo imprisonment for a further period of six months. We also refrain from imposing any separate sentence on the other counts of offences. Out of the fine amount, if realised, a sum of Rs.4000 also be paid to each of the injured as compensation".

29. So far as the accused persons save and except accused No.5 are concerned, I find that the course

adopted by the Apex Court can be certainly adopted as affidavits have been filed by the injured persons recording settlement. As stated earlier, the dispute appears to be over an election and the accused persons have also suffered injuries. As pointed out earlier all accused persons except accused No.5 have undergone sentence for twenty days.

30. The learned counsel appearing for the Appellant has placed reliance on decision of the Apex Court in the case of **Kundan Singh Vs. State of Punjab (AIR 1982 Supreme Court Page 62)**. This was a case where the Appellant before the Apex Court fired gun shots in open courtyard and the victims received simple injuries from the gun shots fired by the Appellant. The Apex Court took the view that there was no intention to injure them and therefore conviction under section 307 of the Indian Penal Code was not justified.

31. The evidence indicates that the accused No.5 did not aim at a particular accused. There were random gunshots fired by him. Considering the evidence of Medical Officer, I find that offence under section 307 of the Penal Code will not be attracted.

Considering the injuries sustained by the three victims who suffered bullet injuries and considering the fact that at least one of them suffered fracture, it is obvious that section 325 and section 326 of the Penal Code will be attracted.

32. At this stage, it will be necessary to refer to the decision of the learned single Judge of this court in the case of **Madan Suleman Gaure Vs. State of Maharashtra (1995 Criminal Law Journal Page 1419).** This court was dealing with a case where conviction was under section 307 of the Indian Penal Code and the accused-Appellant was sentenced to suffer rigorous imprisonment for five years. There was a compromise between the complainant and the Appellant which was brought before the court in the form of purshis. In paragraph No.12 the learned single Judge held thus:

> "12. However, no dispute is raised by the learned A.P.P about the correctness of the pursis and the affidavit filed before this court that the accused-appellant and the complainant Piru Gaure are cousins residing in the same village and that they are having cordial relations. It is seen from the record

that the accused-appellant was arrested for the first time on 16-10-1989 and was enlarged on bail on 20-11-1989. The learned counsel for the accused-appellant has submitted that after the impugned judgment was passed on 26-3-1991, the accused-appellant was arrested on 10-5-1991 under the orders of this court. According to her, therefore, the accused-appellant has undergone the sentence of about 80 days. **Though the offence under Section 307 of the Indian Penal Code is not compoundable, the facts which have been disclosed in the pursis and the affidavit can be taken into consideration while awarding the sentence. There is no adverse material on record to show that the accused-appellant is a previous convict or is hardened criminal.** It is also seen from the record that the accused-appellant was a young man of hardly 22 years at the time of occurrence of incident and during the pendency of the trial as well as this appeal he has not misused the liberty given to him under the bail nor has committed any crime during this period. **Taking over-all view of the entire matter, I am of the opinion**

> **that the interest of justice in the present case would be met in case the sentence is awarded to the accused is reduced to already undergone and the compensation is awarded to the complainant Piru Kanhaiya Gaure in view of number of injuries sustained by him which were 20 in number and some of them were grievous.** In my view, the just and reasonable compensation for the injuries sustained by the complainant would be Rs.7,500/-". (Emphasis supplied)

33. In another decision of the Apex Court in the case of **State of Punjab Vs. Bira Singh and others (1995 Supplementary (3) Supreme Court Page 708)** the Apex Court held thus:

> "5. So far as the sentence is concerned, we find that the trial court let off Bira Singh by giving him the benefit of Probation of Offenders Act. In our opinion, it was misguided leniency shown to Respondent 1 Bira Singh. Such leniency in the matter of sentence encourages a criminal and the society suffers. The courts must strike a proper

> balance while awarding sentence. The trial court should have imposed appropriate sentence on the respondent. However, Bira Singh executed the bond as directed by the trial court in 1985. The occurrence took place more than 10 years ago. We, therefore, do not think it appropriate, at this distant time, to send Bira Singh back to jail by imposing a substantive sentence of imprisonment on him. Therefore while setting aside the direction of the trial court of giving the benefit of the Probation of Offenders Act to Bira Singh, respondent, we sentence him to pay a fine of Rs.5000 and in default of payment of fine to undergo one year's rigorous imprisonment for the offence under Section 304 Part II IPC. The fine, when realised, shall be paid to the widow of Amarjit Singh, the deceased".

34. In the present case so far as accused No.5 is concerned, he has no criminal antecedents or that it cannot be said that he is a hardened criminal. The Appellant No.5 as disclosed from the medical evidence has himself suffered several injuries. The Appellant No.5 has undergone sentence for about 21 days. I find

no difficulty in adopting the approach which was adopted by this court in the decision in the case of Madan Suleman(supra). Out of the injured persons two have expired and other four have filed identical affidavits as stated earlier. The incident is of the year 1987 and almost 19 years and 7 months have gone from the date of the incident. In view of the settlement between the parties and in view of the fact that the accused No.5 also suffered several injuries, he deserves to be let off on the sentence which is already undergone and on fine which is already imposed under the impugned order. Similarly the accused Nos.1,2,3, 5 and 6 who have been held guilty of lesser offences deserve to be let off on the sentences which is undergone.

35. Hence, I pass the following order:

(i) Appeal is partly allowed.

(ii) The substantive sentence of the Appellants is reduced to the one which is already undergone. The order directing payment of fine is confirmed.

(iii) Bail bonds of the Appellants are cancelled.

(iv) If fine amount which is ordered to be paid under the impugned judgment and order is not deposited till today, the same shall be deposited within a period of eight weeks from today failing which the Appellants will undergo sentence awarded in default of payment of fine.

JUDGE